

CREDIT (REPOSSESSION) BILL

AS REPORTED FROM THE COMMERCE COMMITTEE

COMMENTARY

Recommendation

The Commerce Committee has examined the Credit (Repossession) Bill and recommends that it be passed with the amendments shown in the bill.

Conduct of the examination

The Credit (Repossession) Bill was referred to the Commerce Committee on 27 August 1996. The closing date for submissions was 18 April 1997. The committee received and considered 18 submissions from consumer advocacy groups, the credit industry, the New Zealand Law Society, the Legislation Advisory Committee, and other interested groups and individuals. Ten submissions were heard orally. Two hours and 30 minutes were spent on the hearing of evidence and consideration took four hours and 45 minutes.

Advice was received from the Ministry of Consumer Affairs and the Ministry of Justice.

This commentary sets out the details of our consideration of the bill and the major issues addressed by us.

Background

The bill addresses shortcomings in the present law relating to the repossession of goods under certain credit transactions. The bill provides a standardised procedure for the repossession of goods subject to hire purchase agreements under the *Hire Purchase Act 1971*, instruments by way of security under the *Chattels Transfer Act 1924*, and certain security interests under the *Motor Vehicle Securities Act 1989*. Therefore, the bill applies repossession procedures to a wider range of transactions than are currently provided for.

Repossession provisions are currently contained in the *Hire Purchase Act 1971* (HPA), but there are no comparable safeguards for purchasers or debtors from peremptory seizure of goods on the default of credit transactions governed by the *Chattels Transfer Act 1924* (CTA) or the *Motor Vehicle Securities Act 1989* (MVSA).

The bill also addresses the balance between the rights of different parties, and seeks to enhance safeguards for debtors to the greatest extent that is consistent with the legitimate interests of creditors.

Broad issues covered in submissions

Wider reform of credit law

A number of submissions suggested that any reform of repossession rules should form part of a wider reform of the law relating to credit transactions affecting personal property. We heard evidence that the law is in need of general reform, and that proposals to reform a small part of this area of the law may add to the confusion that surrounds credit law, rather than reducing it. The New Zealand Law Society recommended that the bill be deferred to enable repossession provisions to be assessed in relation to, and introduced in conjunction with, wider reform of New Zealand's credit laws.

We were advised that a complete review of credit laws is planned, and that preliminary work has highlighted the magnitude of this task. Consequently, wholesale legislative change is some way off. The Ministry of Consumer Affairs and the Ministry of Justice worked together on the development of the proposals in the bill and told us they consulted widely with consumer and industry groups. Credit repossession initiatives were identified by both ministries as areas in which reform could be undertaken in the short term, while allowing a longer period of time for the more complex and contentious areas of credit law to be worked on.

We are concerned that repossession laws have been dealt with in isolation from the wider review of credit laws.

Coverage of the bill

Some submissions raised concerns about the extent that the bill applies to non-consumer transactions. The types of credit agreements that the bill applies to are set out in clause 5 as: any hire purchase agreement, any instrument by way of security, and any security interest over a motor vehicle, entered on or after the date of commencement of the Act. The bill applies regardless of whether a credit agreement that is subject to registration under the CTA or the MVSA has actually been registered.

The bill as introduced continues the approach of the HPA under which all hire purchase agreements at retail are subject to the current repossession rules. The bill also excludes easily identifiable corporate transactions regulated by the CTA and the MVSA.

In our view, the parties to certain business transactions should have the right to choose whether the repossession rules in the bill should apply to their credit agreements. We therefore recommend that the prohibition on contracting out of the provisions of the bill in clause 43 be omitted from the bill and substituted with a new clause 43. Proposed new clause 43(1) repeats the original provision by stating that the provisions of the Act have effect notwithstanding any provision to the contrary in any agreement.

Proposed new subclause 43(2) provides that subclause (1) will not apply to a credit agreement where the debtor acquires or uses the goods, or holds himself or herself out as doing so, for the purposes of a business.

This amendment allows the parties of certain credit agreements, entered into for the purposes of business, to expressly contract out of the provisions of the bill, provided the conditions in paragraphs (c) to (f) of clause 43(2) are met.

The requirements are that:

- the credit agreement does not relate to goods of a kind ordinarily acquired for personal, domestic or household use or consumption;
- the credit agreement is not a hire purchase agreement;
- the contracting out provision is part of the credit agreement at the time when the credit agreement is made; and
- the credit agreement is in writing.

We consider that these provisos offer appropriate safeguards to debtors against creditors being able to abuse their position, while providing more flexibility for business lenders and borrowers. Consumer contracts will always be covered by the protections in the bill, and clause 43 is consistent with the current repossession provisions in the HPA. Clause 43 is also in line with the approach taken in the Consumer Guarantees Act 1993.

Transitional provision relating to existing hire purchase agreements

We recommend the addition of a new subclause 5 (3) to act as a pointer to the transitional provision contained in clause 48. The effect of the amendment is to state that the bill will apply to existing hire purchase agreements only in respect of repossessions commenced after the commencement of the bill.

Commencement date

We received submissions which proposed that a reasonable lead in time should be provided before the bill comes into force. We heard evidence that the bill will require significant administrative changes to be made, including new forms for notice, and the development of new systems and procedures by creditors. Credit providers submitted that a lead in time of between six months and one year should be allowed. We agree that a reasonable period of time should be allowed before the legislation is effective, and therefore recommend that the commencement date in clause 1 (2) be changed to 1 July 1998. We consider that if the passage of the bill is delayed beyond the end of 1997, a commencement date later than 1 July 1998 may be appropriate.

Definitions

In response to submissions we are recommending amendments to several definitions contained in clause 2 of the bill.

We recommend that the definition of “goods” be expanded by adding a new paragraph to provide that the definition includes any fixtures which are subject to an instrument by way of security, and that are chattels within the meaning of the CTA. This amendment would make the definition in the bill consistent with the definition in the CTA by extending the protection in the bill to items such as milking and shearing plant, and trade machinery.

The definition of “guarantor” has been qualified in our proposed amendment to clarify that the definition in the bill is consistent with the HPA, and no broader. New paragraph (b) provides that “guarantor” does not include a vendor of goods, or a person who enters into guarantees in the ordinary course of business carried on by him or her. This means, for example that the person who sold the goods and any insurance company who was assigned the goods will be excluded from the definition.

One submission noted that the definition of “residential premises”, which refers to “buildings erected primarily and principally as a residence”, would not cover

buildings converted into residences from other buildings, such as warehouses. We agree that the definition should cover all premises currently used as residences, irrespective of the original purpose of the building. We recommend that the definition be broadened to cover “buildings erected or currently used primarily and principally as a residence”.

Creditor can take possession if goods are at risk

Clause 8 of the bill provides that a creditor must not take possession of goods unless the debtor is in default under the credit agreement.

Some credit providers submitted that clause 8 should be modified to allow a creditor to recover goods if they are at risk, regardless of whether the debtor is in default.

Clause 9 (2) of the bill, as introduced, provides that a creditor is not required to serve a pre-possession notice on the debtor where “the creditor has reasonable grounds to believe that the goods have or will be destroyed, damaged, endangered, disassembled, removed or concealed by the debtor”, contrary to the provisions of the credit agreement. We recommend a similar proviso to clause 8, to provide that a creditor can recover goods from a debtor, even if the debtor is not in default under the credit agreement, if the creditor has reasonable grounds to believe that goods are at risk. The onus of proving reasonable grounds will remain on the creditor in both clauses 8 and 9. We recommend simplifying clauses 8 and 9 and linking them together by proposed new subclause 8 (2). This amendment would make the bill consistent with section 26 (4) of the HPA.

Bill does not give creditor rights of entry or possession

Clause 6 (1) provides that the bill does not create a creditors right to take possession of goods.

For the provisions of the bill to apply, a creditor must have gained repossession rights under a credit agreement or through some related arrangement with the borrower which provides for this right. The bill as introduced used the words “whether pursuant to the credit agreement or otherwise” to describe the application of the bill. We agree with the New Zealand Law Society’s submission that the ambit of the words “or otherwise” in clause 6 is uncertain.

We recommend that clause 6 be reworded to clarify that the bill applies where a creditor has a right to take possession of goods, or to enter premises, under a credit agreement, or in any way in connection with a credit arrangement or by virtue of the creditor’s property in the goods. This confirms that the bill regulates existing rights but does not confer new ones. As the revised clause 6 is of broader application, we recommend that clause 15 and clause 20 (2) and (3) be omitted.

Bill to prevail over creditors’ rights

The New Zealand Law Society submitted that clause 7 should not proceed. Clause 7 provides that the bill prevails over any other enactment or rule of law conferring rights or remedies on the creditor. We agree that the provision is drafted more widely than may be necessary to provide the protection to debtors that the bill is designed to give.

Clause 43 contains a prohibition on contracting out of the provisions of the bill, and we consider this provides sufficient protection for debtors. We therefore recommend that clause 7 be omitted from the bill.

Creditors right of entry

Certain times and days restricted against repossession

Clause 17 specifies certain times when a creditor may not exercise his or her right to take possession of goods. This clause was supported by consumer advocacy groups who have received complaints about the unreasonable hours at which some repossession agents have visited debtors' residential premises.

The New Zealand Creditmen's Association (Wellington) Limited submitted that the hours of entry in clause 17 were too restrictive, and should be extended. The Financial Services Federation (Inc) strongly opposed the approach in clause 17, suggesting that it lacked flexibility and failed to recognise the diversity of people's work patterns.

We agree that the hours in clause 17 (1) (a) as introduced are too restrictive and could unfairly limit a creditor's legitimate right to take possession of goods. The majority of the committee agree that the hours that a creditor or creditor's agent may enter residential premises in clause 17 (1) (a) should be extended to "between 6 am and 9 pm on Mondays to Saturdays". We recommend a majority amendment to clause 17 (1) (a) on this basis.

Some members of the committee favoured amending the hours of entry in clause 17 (1) (a) to "between 7 am and 9 pm on Mondays to Saturdays", and one member moved an amendment that the hours of entry be "between 6 am and 9 pm on Mondays to Fridays, and between 7 am and 9 pm on Saturdays".

We recommend further amending clause 17 to provide that a debtor's consent to the creditor entering premises at a time prohibited by clause 17 (1) is not valid if the creditor or creditor's agent seeks the consent in person, at a residential premises, outside the hours and days permitted in subclause (1).

In our view a debtor should receive protection from being approached in his or her home outside these times, but we consider it would not be unreasonable for a creditor to seek a debtor's consent to enter premises at a prohibited time if the approach took place while the debtor was at work.

Certain persons disqualified from acting as repossession agents

Clause 18 as introduced provides that anyone who has been convicted of an offence involving violence, or a crime involving dishonesty, within the last five years, is disqualified from acting as a repossession agent. This clause was supported by several submissions and we received several suggestions for how the provision could be strengthened.

The New Zealand Association of Citizens Advice Bureaux suggested that anyone convicted of a disqualifying offence within the last ten years should be disqualified from acting as a repossession agent.

We recommend that two new paragraphs be added to clause 18 (1) to broaden the group of convicted persons who would be disqualified from acting as a repossession agent. The proposed amendments provide that a disqualified person includes a person on whom there has been imposed, at any time, a sentence of imprisonment of ten years or more or sentence of imprisonment for life; or any person who has been released from a penal institution within the last year. These amendments would, among other things, catch persons convicted of offences involving violence or dishonesty, but who would not have been caught by the original clause 18 because they have not been convicted within the preceding five years, although they were serving a prison sentence for a longer period than five years.

The Dunedin Community Law Centre commented that the penalty imposed on agents with serious convictions who undertake repossessions should be incurred by the person who hired the agent, rather than the agent himself or herself.

We consider that it is appropriate for the primary responsibility for compliance with this provision to rest with the repossession agent, and recommend that the clause be enacted as originally drafted.

Creditors' obligations if occupier not present at time of repossession

New Zealand Federation of Family Budgeting Services (Inc) and Wellington Community Law Centre favour inserting a requirement into the bill that a repossession agent should ensure that the debtor's premises are secure on his or her departure.

We do not consider that an express obligation to ensure premises are secure on departure should be imposed on a creditor. It would not always be possible for a creditor or creditor's agent to ensure premises were secure on departure, if force was required to enter premises for the purpose of repossession. However, we do consider that a creditor or creditor's agent should act responsibly when carrying out a repossession, particularly when the occupier is not present. We recommend that clause 20 be omitted from the bill and substituted with a new clause 20.

Proposed new clause 20 (3) imposes an obligation on the creditor or creditor's agent to take such steps as are reasonably practicable to ensure that the premises are not left obviously open. We also note that clause 16 and the general law impose additional constraints on the exercise of the right of entry.

Increased notice requirements if occupier not present

Clause 20 as introduced requires a repossession agent to leave a notice in writing if a repossession has taken place while the debtor is not present. The purpose of the notice is to alert the debtor that a repossession has taken place, not a burglary. The repossession agent is required to specify in the notice that the premises have been entered, and provide an inventory of any goods that have been repossessed.

If the occupier is present when the repossession agent calls, the documents required to be produced are set out in clause 19 (a) to (c). They include a copy of the pre-possession notice, and evidence establishing the person's authority to take possession of the goods on behalf of the creditor. We consider it is appropriate for a debtor to be provided with these documents whether they are present when the repossession agent calls or not. We recommend the inclusion of new paragraph (c) in proposed new clause 20, to provide that the documents referred to in clause 19 (a) to (c) are required to be left behind if the occupier is not present.

We also consider that the notice should include the date on which the premises were entered, and we have recommended that new clause 20 (2) provide for this.

Debtor must not wilfully obstruct a creditor's lawful entry to take possession of goods

We were advised that the word "intentionally" in clause 21 should be replaced with the word "wilfully" to maintain consistency between the bill and the parallel provision in the HPA.

A line of case law has developed in relation to the meaning of the word "wilfully", and some interpretations do not conform with definitions of the word "intentionally". We therefore recommend that clause 21 be amended by omitting the word "intentionally" and substituting it with "wilfully".

Rules for the sale of repossessed goods

Clause 28 sets out the rules for the sale of repossessed goods by a creditor, and requires the creditor to ensure that every aspect of the sale is commercially reasonable. Under subclause (2) the debtor is entitled to obtain a valuation of the goods following the repossession.

Pacific Retail Finance Limited submitted that granting a debtor or debtor's agent access to repossessed goods for the purpose of valuation could impose serious practical difficulties on creditors. We agree that the debtor's right should only be exercised in a reasonable manner. We recommend that subclause (2) be omitted from the bill, and propose that new clause 28A be inserted, providing some limitations on the debtor's right to obtain a valuation of goods.

Proposed new clause 28A (2) specifies that the debtor must request access to the goods by giving reasonable notice to the creditor, and that the valuation must be carried out at a reasonable time. It further provides that the debtor's valuer does not have a right to remove the goods without the creditor's consent. We further recommend that new clause 28A specify that the debtor is entitled to obtain, at the debtor's expense, one valuation only. This should prevent the practical difficulties envisaged by some creditors arising from an unlimited right to have access to the goods prior to their sale by the creditor.

Reinstatement of a credit agreement

Clause 30 sets out the consequences of a debtor reinstating the credit agreement after the creditor has taken possession of the goods, and before the goods are sold. The Legislation Advisory Committee submitted that the use of the word "must" in clause 30 (1)(b) seems inappropriate, and suggested that this clause would be more appropriately worded as a deeming provision. We agree, and recommend that paragraph (b) be omitted and substituted with a provision stating that the debtor is deemed to receive and hold returned goods according to the terms of the credit agreement, as if the default had not occurred and the creditor had not repossessed the goods.

Miscellaneous Provisions

Application of the law relating to illegal contracts

The New Zealand Law Society submitted that a provision of similar effect to section 52 of the HPA should be contained in the bill so that an act which contravenes the bill committed in the course of performance of the contract will not make the contract illegal, or make any provisions of that contract unenforceable. We agree that such a clause is desirable and would be consistent with the present repossession rules. We therefore recommend the insertion of proposed new clause 43A.

Consequential amendments to the Insolvency Act 1967

Proposed new clause 45A amends section 91 (1) of the *Insolvency Act 1967* to update the references from the HPA to the equivalent ones in the bill.

Amendment to the Second Schedule to the Credit Contracts Act 1981

The Financial Services Federation was concerned that clause 47 would amend the *Credit Contracts Act 1981* in a way that applied to all credit contracts, whether or not they were covered by the bill. They submitted that, in some cases, such a provision in the *Credit Contracts Act 1981* could not be complied with; for example, lease agreements. We were advised that this outcome was unintentional.

We recommend that clause 47 be amended to clarify that the statement of rights in this clause applies only to credit contracts under that Act which are also credit agreements for the purposes of this bill.

Amendments to the form of post-possession notice in Schedule 2

We recommend amendments to Schedule 2 of the bill to provide debtors with a fuller description of the procedures that will apply once a creditor has taken possession of goods.

Clause 22 of the bill provides that a post-possession notice must be served on the debtor and on every guarantor of the debtor within 21 days of the creditor taking possession of goods.

Clause 23 sets out that a post-possession notice must be in writing in the form set out in Schedule 2.

We consider that the post-possession notice should notify the debtor of the date on which the goods were repossessed. We recommend that the date be included with the description of the goods in the post-possession notice.

We also consider that the post-possession notice should explain the terms “reinstating” and “settling” of a credit agreement. The post-possession notice states that, if the debtor acts within fifteen days to reinstate or settle the credit agreement, they may regain possession of the goods. We recommend that explanations of both terms be included on the post-possession notice.

We recommend that a statement of repossession costs be included in the creditor’s estimate of the amount a debtor would be required to pay to reinstate or settle the agreement.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

New (Unanimous)

Subject to this Act,

Text inserted unanimously

Struck Out (Majority)

Subject to this Act,

Text struck out by a majority

New (Majority)

Subject to this Act,

Text inserted by a majority

{Subject to this Act,}

Words struck out unanimously

<Subject to this Act,>

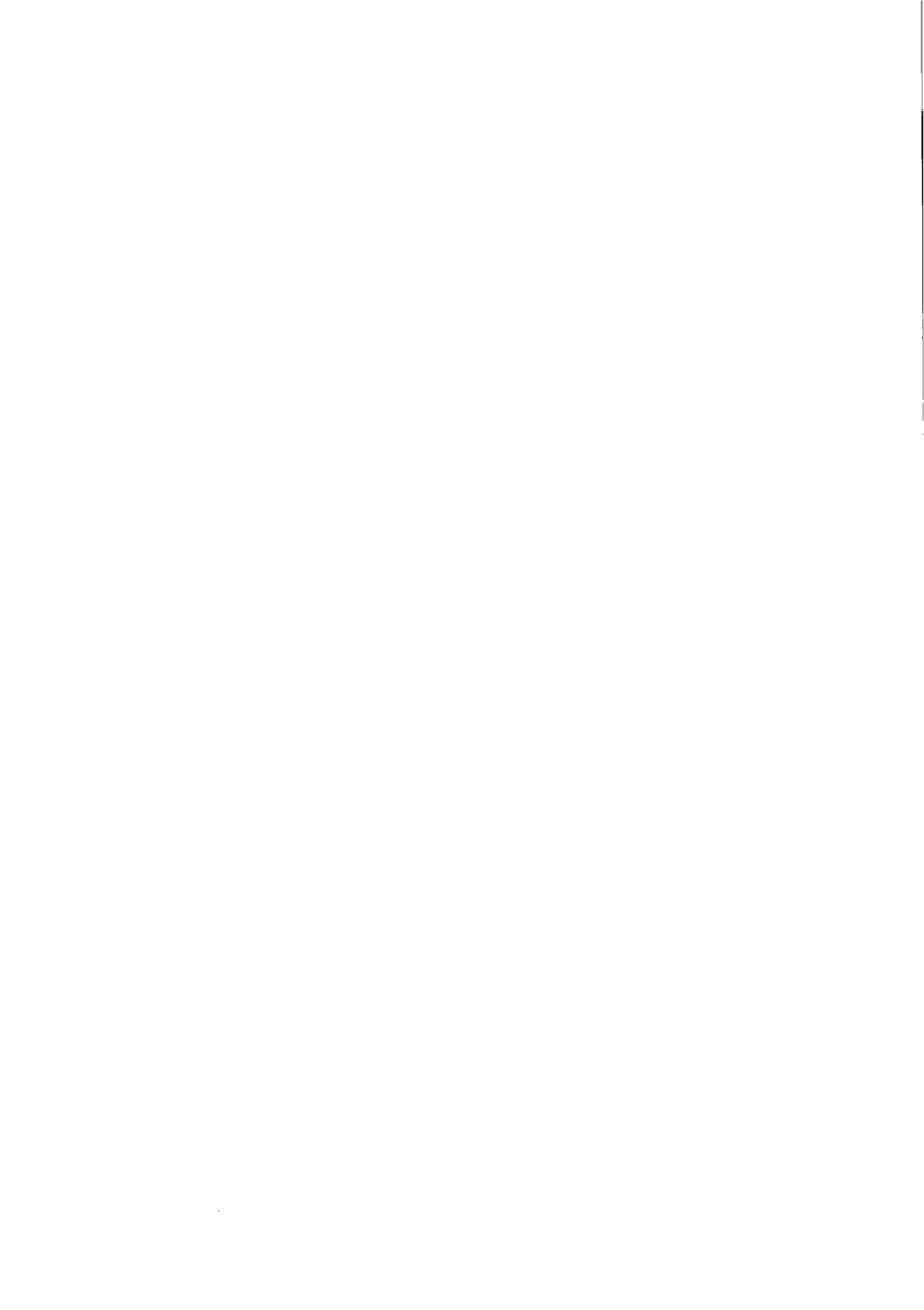
Words struck out by a majority

Subject to this Act,

Words inserted unanimously

<Subject to this Act,>

Words inserted by a majority



CREDIT (REPOSSESSION)

ANALYSIS

Title	23. Form of post-possession notice	
1. Short Title and commencement	24. Consequences of not giving post-possession notice	
PART 1		
PRELIMINARY		
2. Interpretation	25. Creditor must not sell goods until 15 days after post-possession notice	
3. Act binds Crown	26. Consequences of selling within 15 days of post-possession notice	
4. Purpose of this Act	27. Creditor must sell goods 15 days after post-possession notice	
5. Credit agreements to which Act applies	28. Rules relating to sale by creditor	
6. Act applies where creditor already has right to take possession, etc.	28A. Debtor may obtain valuation of goods before sale	
PART 2		
RULES THAT APPLY BEFORE POSSESSION OF GOODS IS TAKEN		
8. Circumstances in which creditor can take possession	29. Debtor's right to reinstate agreement	
9. Notice to be given to debtor and guarantor before taking possession of goods	30. Consequences of reinstating agreement	
10. Form of pre-possession notice	31. Debtor's right to introduce buyer	
11. Creditor must allow time to remedy default	32. Debtor's right to settle agreement	
12. Offences against this Part	33. Debtor's right to force sale	
13. Debtor may apply to Court for relief	34. Creditor to give statement of account to debtor	
14. Court may grant relief	35. Debtor's right to refund	
PART 3		
RIGHT OF ENTRY		
16. Creditor must not enter premises in unreasonable manner	36. Limit on creditor's right to recover from debtor	
17. Creditor must not enter residential premises at prohibited time	37. Court may vary existing judgments or orders when goods are repossessed	
18. Certain persons disqualified from taking possession of goods	PART 5	
19. Documents to be produced on entry	MISCELLANEOUS PROVISIONS	
20. Entry if occupier not present	38. Power of Court to extend times	
21. Offence to obstruct taking possession of goods	39. Service of notices	
PART 4		
RULES THAT APPLY AFTER POSSESSION OF GOODS IS TAKEN		
22. Notice to be given to debtor and guarantor after taking possession of goods	40. Jurisdiction of District Courts	
	41. Jurisdiction of Disputes Tribunals	
	42. Offences to be punishable on summary conviction	
	43. No contracting out except for certain business transactions	
	43A. Application of law relating to illegal contracts	
	44. Power to amend forms	
	PART 6	
	AMENDMENTS TO OTHER ENACTMENTS	
	45. Amendments to Chattels Transfer Act 1924	
	45A. Amendment to Insolvency Act 1967	
	91. Goods on hire purchase	
	46. Amendments to Hire Purchase Act 1971	

47. Amendment to Credit Contracts Act 1981	SCHEDULES
47A. Amendment to Disputes Tribunals Act 1988	Schedule 1
47B. Amendments to Income Tax Act 1994	Pre-possession Notice
48. Transitional provision relating to existing hire purchase agreements	Schedule 2
	Post-possession Notice

A BILL INTITULED

An Act to govern the taking of possession of goods by a creditor under—

- (a) A hire purchase agreement under the Hire Purchase Act 1971; or 5
- (b) An instrument by way of security under the Chattels Transfer Act 1924; or
- (c) A security interest under the Motor Vehicle Securities Act 1989

BE IT ENACTED by the Parliament of New Zealand as follows: 10

1. Short Title and commencement—(1) This Act may be cited as the Credit (Repossession) Act 1996.

Struck Out (Unanimous)

(2) This Act shall come into force on the **1st day of July 1997.**

New (Unanimous)

(2) This Act comes into force on **1 July 1998.**

PART 1

PRELIMINARY

2. Interpretation—In this Act, unless the context otherwise requires,— 20

“Amount of credit” means—

(a) The money or money’s worth provided or agreed to be provided by the creditor under the credit agreement:

(b) The money the payment of which is forborne or agreed to be forborne by the creditor under the credit agreement: 25

(c) The cash price of the goods (where there is an agreement to sell the goods or the debtor has an option to purchase the goods), less the following amounts:

- 5 (i) The amount of any deposit paid at or before the making of the agreement; and
(ii) The amount of any trade-in allowance agreed on:

10 (d) In relation to a credit agreement that secures the obligations of the debtor as guarantor under a guarantee, the amount of the debtor's liability under that guarantee:

“Cash price”, in relation to goods sold, means—

15 (a) The lowest price at which a person could have purchased those goods from the creditor on the basis of payment in full at the time the agreement was made; or

(b) If there is no such price, the fair market value of those goods at the time the agreement was made:

20 “Court” means the High Court or a District Court that has jurisdiction under **section 40** or a Disputes Tribunal that has jurisdiction under **section 41**:

25 “Credit agreement” or “agreement” means an agreement, instrument, or interest referred to in **section 5**:

“Creditor”—

(a) Means—

30 (i) In relation to a hire purchase agreement, the vendor within the meaning of section 2 of the Hire Purchase Act 1971:

(ii) In relation to an instrument by way of security, the grantee within the meaning of section 2 of the Chattels Transfer Act 1924:

35 (iii) In relation to a security interest, the secured party within the meaning of section 2 of the Motor Vehicle Securities Act 1989; and

40 (b) Includes, if the rights of such a person are transferred by assignment (whether absolutely or by way of mortgage) or operation of law, the person for the time being entitled to those rights:

“Creditor’s agent” means a person authorised by a creditor to take possession of goods on behalf of the creditor, and includes such a person who is an employee of the creditor:

“Debtor”—

(a) Means,—

(i) In relation to a hire purchase agreement, the purchaser within the meaning of section 2 of the Hire Purchase Act 1971:

(ii) In relation to an instrument by way of security, the grantor within the meaning of section 2 of the Chattels Transfer Act 1924:

(iii) In relation to a security interest, the debtor within the meaning of section 2 of the Motor Vehicle Securities Act 1989; and

(b) Includes, if the rights of such a person are transferred by assignment (whether absolutely or by way of mortgage) or operation of law, the person for the time being entitled to those rights:

“Default” means one or more breaches of a credit agreement by the debtor sufficient, according to the terms of the agreement, to give rise to the creditor’s right to take possession of the goods:

Struck Out (Unanimous)

“Goods” means any personal chattels (other than money or things in action) comprised in or subject to a credit agreement:

New (Unanimous)

“Goods”—

(a) Means any personal chattels (other than money or things in action) comprised in or subject to a credit agreement; and

(b) Includes any fixtures which are comprised in or subject to an instrument by way of security and which are chattels within the meaning of the Chattels Transfer Act 1924:

Struck Out (Unanimous)

“Guarantor” means—

5 (a) For the purposes of the definition of “amount of credit”, a person who guarantees the performance of another person’s obligations under a contract, or who indemnifies the creditor against loss which he or she may incur in respect of that contract, or who assumes liability for performing the obligations of that other person under that contract; and “guarantee” has, for that purpose, a corresponding meaning:

10 (b) For the other purposes of this Act, a person who guarantees the performance of a debtor’s obligations under a credit agreement, or who indemnifies a creditor against loss which he or she may incur in respect of that agreement, or who assumes liability for performing the obligations of a debtor under the agreement; and “guarantee” has a corresponding meaning:

New (Unanimous)

20 “Guarantor”,—

(a) For the purposes of the definition of “amount of credit”, means a person who guarantees the performance of another person’s obligations under a contract, or who indemnifies a creditor against loss which he or she may incur in respect of a contract, or who assumes liability for performing the obligations of another person under a contract:

25 (b) For the other purposes of this Act,—

30 (i) Means a person who guarantees the performance of a debtor’s obligations under a credit agreement, or who indemnifies a creditor against loss which he or she may incur in respect of a credit agreement, or who assumes liability for performing the obligations of a debtor under a credit agreement; but

35 (ii) Does not include a person who is the vendor of the goods comprised in or subject to a credit agreement:

New (Unanimous)

(iii) Does not include a person who executes or enters into a guarantee in the ordinary course of a business carried on by him or her,—

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and “guarantee” has a corresponding meaning:

“Hire purchase agreement” has the same meaning as in section 2 of the Hire Purchase Act 1971:

“Holiday” has the same meaning as in section 4 of the Acts Interpretation Act 1924:

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“Instrument by way of security” has the same meaning as in section 2 of the Chattels Transfer Act 1924:

“Net balance due” in relation to a credit agreement that is a hire purchase agreement, means the amount for the time being payable in terms of that agreement to enable the debtor to acquire title to the goods after taking into account the rebates allowed by the agreement for early completion or the statutory rebates calculated in accordance with section 23 of the Hire Purchase Act 1971, whichever in the aggregate are the greater:

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“Pay” includes tender:

“Pre-possession notice” means a notice under **section 10**:

“Post-possession notice” means a notice under **section 23**:

“Residential premises” means a building, or part of a building, that is a house, flat, townhouse, home unit, or similar dwelling erected, or currently used, primarily and principally as a residence, and includes any land, improvements, or appurtenances belonging to the dwelling or usually enjoyed with it:

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“Security interest” has the same meaning as in section 2 of the Motor Vehicle Securities Act 1989, but excludes—

(a) The interest of the lessor in, or the power of the lessor over, a motor vehicle that is the subject of a lease:

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(b) Any charge over a motor vehicle (including a floating charge) created by a company registered under the Companies Act 1993 or by a society

registered under the Industrial and Provident Societies Act 1908.

3. Act binds Crown—This Act binds the Crown.

5 **4. Purpose of this Act**—The purpose of this Act is to set out the rules that apply when a creditor takes possession of goods under a credit agreement to which this Act applies.

5. Credit agreements to which Act applies—(1) This Act applies to—

- 10 (a) Any hire purchase agreement; and
(b) Any instrument by way of security; and
(c) Any security interest over a motor vehicle—
that is entered into on or after the date of commencement of this Act.

15 (2) This Act applies whether or not a credit agreement that is subject to registration under the Chattels Transfer Act 1924 or the Motor Vehicle Securities Act 1989 has been registered.

New (Unanimous)

(3) This Act also applies as provided in section 48.

Struck Out (Unanimous)

20 **6. Act does not give creditor right to take possession**—
(1) Nothing in this Act gives a creditor a right to take possession of goods.

25 (2) This Act applies where the creditor has the right to take possession of goods, whether pursuant to the credit agreement or otherwise.

New (Unanimous)

30 **6. Act applies where creditor already has right to take possession, etc**—(1) This Act applies where a creditor has a right to take possession of goods, or to enter premises, or to enter premises when an occupier is not present, under, or in any way in connection with, a credit agreement or by virtue of the creditor's property in the goods.

New (Unanimous)

(2) This Act does not confer a right to take possession of goods, or a right to enter premises, or a right to enter premises when an occupier is not present.

(3) This Act is to be read subject to **subsection (2)**.

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Struck Out (Unanimous)

7. Prohibitions and restrictions to prevail over creditors' rights—This Act applies notwithstanding any enactment or rule of law conferring rights or remedies on the creditor.

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PART 2

RULES THAT APPLY BEFORE POSSESSION OF GOODS IS TAKEN

Struck Out (Unanimous)

8. Creditor may take possession only if debtor in default—A creditor must not take possession of goods unless the debtor is in default under the credit agreement.

15

Cf. 1971, No. 147, s. 26 (1) (a)

New (Unanimous)

8. Circumstances in which creditor can take possession—(1) A creditor must not take possession of goods unless—

20

- (a) The debtor is in default under the credit agreement; or
- (b) The goods are at risk.

(2) In this section and **section 9**, goods are “at risk” if the creditor has reasonable grounds to believe that the goods have been or will be destroyed, damaged, endangered, disassembled, removed, or concealed contrary to the provisions of the agreement; but the onus of proving the existence of those grounds is on the creditor.

25

Cf. 1971, No. 147, s. 26 (1) (a)

30

9. Notice to be given to debtor and guarantor before taking possession of goods—(1) A creditor must serve a pre-possession notice on the debtor, and on every guarantor of the debtor, before taking possession of goods.

5

Struck Out (Unanimous)

(2) This section does not apply if the creditor has reasonable grounds to believe that the goods have been or will be destroyed, damaged, endangered, disassembled, removed, or concealed contrary to the provisions of the agreement; but the onus of proving the existence of those grounds must lie upon the creditor.

10

New (Unanimous)

(2) This section does not apply if the goods are at risk within the meaning of **section 8 (2)**.

15

Cf. 1971, No. 147, s. 26 (1) (b), (4)

10. Form of pre-possession notice—Every pre-possession notice must be in writing in the form set out in **Schedule 1**,—

(a) Specifying the nature of the default; and

20

(b) Requiring the debtor to remedy the default (if it is capable of being remedied) within the period specified in the notice (being a period of not less than 15 days after service of the notice on the debtor).

Cf. 1971, No. 147, s. 26 (1) (b)

25

11. Creditor must allow time to remedy default—A creditor must not take possession of goods in respect of which a pre-possession notice has been given unless—

(a) The period for remedying the default specified in the notice has expired; and

30

(b) The debtor has failed, within that period, to remedy the default complained of in so far as it is capable of being remedied.

Cf. 1971, No. 147, s. 26 (1) (c)

35

12. Offences against this Part—Every person who contravenes any of sections 8 to 11 commits an offence and is liable on conviction to a fine not exceeding \$3,000.

Cf. 1971, No. 147, s. 26 (5)

13. Debtor may apply to Court for relief—A debtor may apply to a Court for relief if—

- (a) A creditor serves a pre-possession notice on the debtor; or
 - (b) A creditor has taken possession of the goods,—
- in contravention of this Act. 5

Cf. 1971, No. 147, s. 26 (2)

14. Court may grant relief—(1) The Court may, having regard to—

- (a) The conduct of the parties; and
 - (b) The nature of the default; and 10
 - (c) Such other matters as it thinks proper,—
- grant such relief to a debtor who applies under **section 13** as is reasonable, whether or not the granting of the relief involves a variation in the terms of the credit agreement.

(2) The Court may grant relief on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise as the Court, in the circumstances of each case, thinks fit. 15

(3) However, where the Court determines that any application is vexatious, it must order—

- (a) That the debtor pay to the creditor the full costs 20
(including reasonable costs incurred between solicitor and client), fees, and other reasonable expenses incurred by the creditor in connection with the application; and
- (b) That **section 25 (1)** and **section 31** do not apply in respect of the 25
goods.

Cf. 1971, No. 147, s. 26 (2), (3)

PART 3

RIGHT OF ENTRY

Struck Out (Unanimous) 30

15. Act does not give creditor right to enter premises—
(1) Nothing in this Act gives a creditor or a creditor's agent a right to enter any premises.

(2) This Act applies where the creditor has the right to enter any premises, whether pursuant to the credit agreement or otherwise and whether for the purpose of taking possession of goods or for any other purpose in connection with goods. 35

16. Creditor must not enter premises in unreasonable manner—A creditor or a creditor’s agent must not exercise a right to enter premises in a manner that is unreasonable.

Cf. 1971, No. 147, s. 27 (1)

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Struck Out (Unanimous)

17. Creditor must not enter residential premises outside certain hours—A creditor or a creditor’s agent must not exercise a right to enter residential premises—

New (Unanimous)

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17. Creditor must not enter residential premises at prohibited time—(1) The following are prohibited times for the purposes of this section:

(a) Outside the hours of ~~<7 a.m. to 8 p.m.>~~ <6 a.m. to 9 p.m.> on Mondays to Saturdays; or

15

Struck Out (Unanimous)

(b) At any time on a Sunday; or

(c) At any time on a holiday,—

unless the debtor consents in writing to the exercise of the right to enter those premises outside those hours or on a Sunday or

20

on a holiday.

(2) Every such consent must be given—

(a) After the default has occurred; and

(b) Before the creditor or creditor’s agent arrives at the premises with a view to taking possession of the goods.

25

New (Unanimous)

(b) Any time on a Sunday; or

(c) Any time on a holiday.

30

(2) A creditor or a creditor’s agent must not exercise a right to enter residential premises at a prohibited time unless the debtor consents in writing to the entry of those premises at a prohibited time.

New (Unanimous)

- (3) The consent is not valid unless it is given—
- (a) After the default has occurred; and
 - (b) Before the creditor or creditor's agent arrives at the premises with a view to taking possession of the goods. 5
- (4) The consent is not valid if the creditor or creditor's agent seeks it in person at a prohibited time at any residential premises.

18. Certain persons disqualified from taking possession of goods— 10

Struck Out (Unanimous)

- (1) This section applies to any person who has been convicted within the preceding 5 years—
- (a) Of any offence involving violence against the person; or 15
 - (b) Of any crime involving dishonesty within the meaning of section 2 of the Crimes Act 1961.

New (Unanimous)

- (1) The following are disqualified persons for the purposes of this section: 20
- (a) Any person who has been convicted within the preceding 5 years of any offence involving violence against the person, or of any crime involving dishonesty within the meaning of section 2 of the Crimes Act 1961:
 - (b) Any person on whom there has been imposed, at any time, a sentence of imprisonment for a term of 10 years or more or a sentence of imprisonment for life: 25
 - (c) Any person who has been released from a penal institution within the preceding year.

- (2) *(Every such person)* Every disqualified person commits an offence, and is liable on summary conviction to a fine not exceeding \$10,000, who, being a creditor or a creditor's agent,— 30

- (a) Enters, or attempts to enter, any premises for the purpose of taking possession of any goods or for any other purpose in connection with any goods; or
 - (b) Takes, or attempts to take, possession of any goods.
- 5 (3) Any creditor or creditor's agent who enters, or attempts to enter premises, is, for the purpose of this section, presumed, in the absence of evidence to the contrary, to be entering for the purpose of taking possession of goods or for another purpose in connection with goods.
- 10 **19. Documents to be produced on entry**—Every creditor or creditor's agent who exercises a right of entry of premises must, on first entering the premises if anyone is present, and, if requested, at any subsequent time, produce—
- 15 (a) A copy of the pre-possession notice (unless one was not required under **section 9 (2)**); and
 - (b) In the case of a creditor's agent, evidence reasonably capable of establishing the person's authority to take possession of the goods on behalf of the creditor; and
 - 20 (c) In the case of an entry outside the hours specified in **section 17**, the debtor's written consent to the exercise of the right of entry.

Struck Out (Unanimous)

- 25 **20. Notice to be left if occupier not present**—(1) If the occupier of premises is not present when possession of goods is taken, the creditor or creditor's agent must leave a notice in writing in a prominent place before leaving the premises specifying—
- (a) That the premises have been entered; and
 - 30 (b) If possession has been taken of any goods, an inventory of those goods.
- (2) Nothing in this Act gives a creditor or a creditor's agent any right to enter premises when the occupier is not present.
- (3) This section applies where the creditor has that right, whether pursuant to the credit agreement or otherwise.

35 *New (Unanimous)*

- 20. Entry if occupier not present**—(1) This section applies if a creditor or creditor's agent enters premises for the purpose of taking possession of goods, or for any other purpose in

New (Unanimous)

connection with goods, when the occupier of the premises is not present.

(2) The creditor or creditor's agent must, before leaving the premises, leave a notice in writing in a prominent place— 5

- (a) Specifying that the premises have been entered and the date of entry; and
- (b) Containing an inventory of any goods of which possession has been taken; and
- (c) Accompanied by a copy of the documents referred to in section 19 (a) to (c). 10

(3) The creditor or creditor's agent must take such steps as are reasonably practicable to ensure that the premises are not left obviously open.

21. Offence to obstruct taking possession of goods— 15
Every person commits an offence against this Act, and is liable on summary conviction to a fine not exceeding \$10,000 who (*intentionally*) wilfully and forcibly obstructs a creditor or a creditor's agent who is lawfully exercising any power to take possession of goods. 20

Cf. 1971, No. 147, s. 26 (6)

PART 4

RULES THAT APPLY AFTER POSSESSION OF GOODS IS TAKEN

22. Notice to be given to debtor and guarantor after taking possession of goods—A creditor must serve a post-possession notice on the debtor, and on every guarantor of the debtor, within 21 days of taking possession of goods. 25

Cf. 1971, No. 147, s. 28 (1)

23. Form of post-possession notice—Every post-possession notice must be in writing in the form set out in Schedule 2. 30

Cf. 1971, No. 147, s. 28 (1)

24. Consequences of not giving post-possession notice—If a post-possession notice is not served as required by this Act,— 35

- (a) The costs of taking possession of the goods must be borne by the creditor; and

(b) The creditor is not entitled to recover those costs from the debtor or the guarantor.

Cf. 1971, No. 147, s. 28 (2)

5 **25. Creditor must not sell goods until 15 days after post-possession notice**—(1) Where a creditor has taken possession of any goods, the creditor must not, without the consent in writing of the debtor obtained after possession of the goods has been taken, sell or dispose of the goods or part with possession of the goods (except for the purposes of storage or repair) until after the expiry of 15 days from the date of service of the post-possession notice on the debtor.

10 (2) This section applies except as provided in an order under **section 14 (3)** (vexatious applications).

Cf. 1971, No. 147, s. 28 (3)

15 **26. Consequences of selling within 15 days of post-possession notice**—If the creditor contravenes **section 25**,—

(a) The liability of the debtor for anything other than—

20 (i) The amount of credit under the credit agreement; or

(ii) Where the agreement secures the performance of some obligation other than the payment of money, the performance of that obligation,— is extinguished; and

25 (b) The creditor must repay any money already paid to the creditor by any person on account of, or in satisfaction of, any amount in respect of which liability is extinguished by **paragraph (a)**.

Cf. 1971, No. 147, s. 28 (4)

30 **27. Creditor must sell goods 15 days after post-possession notice**—(1) The creditor must offer the goods for sale after the expiration of 15 days from the date of service of the post-possession notice on the debtor.

(2) This section does not apply if—

35 (a) The debtor reinstates the agreement under **section 29**; or

(b) The debtor introduces a buyer under **section 31** and the buyer completes the purchase of the goods; or

(c) The debtor settles the agreement under **section 32**; or

(d) The Court determines otherwise in an order under **section 14 (3)** (vexatious applications).

40 Cf. 1971, No. 147, s. 28 (5)

28. Rules relating to sale by creditor—(1) Any sale by a creditor may be by auction or public tender or a private sale but, in any case, the creditor must ensure that every aspect of the sale, including the manner, time, place, and terms, is commercially reasonable and, in particular, must use all reasonable efforts to obtain the best price. 5

Struck Out (Unanimous)

(2) The debtor is entitled, at any time after the creditor takes possession of the goods, but before the creditor sells or agrees to sell the goods in accordance with this Act, to obtain, at the debtor's expense, a valuation of the goods as at the time possession was taken by the creditor, and, if requested by the debtor, the creditor must permit the debtor or the debtor's valuer access to the goods for such time as is reasonably necessary to enable a valuation of the goods to take place. 10 15

(3) Unless the goods are perishable or threaten to decline speedily in value, the creditor must give the debtor reasonable notice of—

(a) The time and place of any proposed offering of the goods for sale by public auction, and of the existence and amount of any reserve price: 20

(b) Any proposed offering of the goods for sale by public tender.

(4) The creditor and the debtor are each entitled to bid at any public auction or, where the goods are offered for sale by public tender, to submit tenders, as the case may require, and if the creditor is the successful bidder or tenderer, the goods, for the purposes of this Act, are deemed to have been sold for the amount of the creditor's bid or tender. 25

(5) The onus of proving that the goods have been sold in accordance with this section is on the creditor. 30

(6) **Subsection (1)** does not apply if—

(a) The debtor introduces a buyer under **section 31** and the buyer completes the purchase of the goods; or

(b) The debtor forces sale under **section 33**. 35

Cf. 1971, No. 147, s. 28 (6)–(9)

New (Unanimous)

28A. Debtor may obtain valuation of goods before sale—(1) The debtor is entitled to obtain, at the debtor's expense, 1 valuation of the goods as at the time possession was taken by the creditor.

- 5
- (2) The rules relating to valuations are as follows:
- (a) The valuation may take place at any time after the creditor takes possession of the goods, but before the creditor sells or agrees to sell the goods in accordance with this Act:
- 10
- (b) The debtor must request access to the goods by giving reasonable notice to the creditor:
- (c) The creditor must permit the debtor's valuer such access to the goods as is reasonably necessary to enable the valuation of the goods to take place:
- 15
- (d) The debtor's valuer must carry out the valuation at a reasonable time:
- (e) The debtor's valuer has no right to remove the goods unless the creditor gives consent to the removal:
- 20
- (f) The debtor may accompany his or her valuer when the valuation takes place.

29. Debtor's right to reinstate agreement—(1) The debtor may, at any time after the creditor has taken possession of the goods and at any time before the creditor sells or agrees to sell the goods in accordance with this Act, reinstate the agreement by—

- 25
- (a) Paying to the creditor the amount required to reinstate the agreement or, where the agreement secures the performance of an obligation other than the payment of money, performing any accrued obligations; and
- 30
- (b) Remedying any default in so far as it is capable of being remedied.
- (2) In this section,—
- (a) The "amount required to reinstate the agreement" means
- 35
- the aggregate of—
- (i) Any amounts which have fallen due for payment under the credit agreement and have not been paid, including, without limitation, interest and other charges, but excluding, where the agreement provides that the total amount of credit falls due for payment immediately on the debtor's default, that
- 40

part of the amount of credit which would not have fallen due but for that provision; and

(ii) The reasonable costs and expenses of the creditor of and incidental to taking possession of, holding, storing, repairing, maintaining, valuing, and preparing for the sale of, the goods and of returning them to the order of the debtor; and

(iii) The costs reasonably and actually incurred by the creditor in doing any act, matter, or thing necessary to remedy any default by the debtor:

(b) "Accrued obligations" means any obligations which have fallen due for performance under the credit agreement and have not been performed.

(3) This section applies except as provided in an order under **section 14 (3)** (vexatious applications).

Cf. 1971, No. 147, s. 29 (1) (a), (2)

30. Consequences of reinstating agreement—(1) Where the right to reinstate the agreement is exercised under **section 29**,—

(a) Upon the receipt of the required amount, or confirmation of the performance of the accrued obligations and the default being remedied, the creditor must forthwith return the goods to the debtor; and

Struck Out (Unanimous)

(b) The goods must be received and held by the debtor pursuant to the terms of the credit agreement as if the default had not occurred and the creditor had not taken possession of the goods.

New (Unanimous)

(b) The debtor is deemed to receive and hold the returned goods pursuant to the terms of the credit agreement as if the default had not occurred and the creditor had not taken possession of the goods.

(2) Where the goods are returned to the debtor pursuant to **subsection (1) (a)** and a particular default has not been remedied, the creditor does not have any right, arising out of that default, to take possession of the goods unless,—

(a) By notice in writing served on the debtor at the time of the return of the goods, the creditor specifies the default and requires it to be remedied; and

5 (b) The debtor fails to remedy the default within a period to be specified in the notice (being a period of not less than 14 days after the service of the notice on the debtor).

Cf. 1971, No. 147, s. 29 (1) (a), (3)

31. Debtor's right to introduce buyer—(1) The debtor
10 may, at any time after the creditor has taken possession of the goods and at any time before the creditor sells or agrees to sell the goods in accordance with this Act, require the creditor to sell the goods to any person introduced by the debtor who is prepared to purchase the goods for cash at a price not less than
15 the estimated value of the goods set out in the post-possession notice served on the debtor.

(2) This right may be exercised by giving to the creditor a notice in writing signed by the debtor, or his or her agent.

(3) This section applies except as provided in an order under
20 **section 14 (3)** (vexatious applications).

Cf. 1971, No. 147, s. 29 (1) (b)

32. Debtor's right to settle agreement—(1) The debtor
may, at any time after the creditor has taken possession of the goods and at any time before the creditor sells or agrees to sell
25 the goods in accordance with this Act, settle the debtor's obligations under the credit agreement—

(a) By paying to the creditor the amount required to settle the agreement; or

30 (b) Where the agreement secures the performance of an obligation other than the payment of money, by performing that obligation.

(2) In this section, "the amount required to settle the agreement"—

35 (a) Means, in the case of a hire purchase agreement, the net balance due; and

(b) Means, in the case of any other agreement, the balance of the amount of credit outstanding, together with any interest and charges payable under the agreement; and

40 (c) Includes the reasonable costs and expenses of the creditor of and incidental to taking possession of, holding, storing, repairing, maintaining, valuing, and

preparing the sale of, the goods and of returning them to the order of the debtor; and

- (d) Includes the costs reasonably and actually incurred by the creditor in doing any act, matter, or thing necessary to remedy any default by the debtor. 5
- (3) Where the right to settle the agreement is exercised,—
- (a) Upon the receipt of that amount, or confirmation of the performance of that obligation, the creditor must forthwith return the goods to the debtor; and
- (b) The agreement terminates, with the rights and obligations of the parties to it satisfied. 10

Cf. 1971, No. 147, s. 30

33. Debtor's right to force sale—(1) If the goods have not been sold within 3 months, the debtor may either—

- (a) Apply to the Court for an order directing the sale of the goods, within such time and upon such conditions as the Court thinks fit; or 15
- (b) Require the creditor to put the goods up for sale by public auction.
- (2) The period of 3 months commences with the date on which the creditor takes possession of the goods. 20
- (3) Upon application under this section, the Court may make such order as it thinks fit.
- (4) The following rules apply to a sale required under subsection (1) (b): 25
- (a) The debtor must require the sale by notice in writing to the creditor, signed by the debtor or the debtor's agent; and
- (b) The auction must be held within 2 months after the date that notice is given; and 30
- (c) The auction must be in such manner as may be agreed between the creditor and the debtor, and, failing agreement, in such manner as may be approved by a Registrar of the District Court; and
- (d) The creditor must give the debtor reasonable notice of the time and place of the auction; and 35
- (e) The creditor and the debtor are each entitled to bid at the auction; and
- (f) There must be no reserve price.

Cf. 1971, No. 147, s. 31

34. Creditor to give statement of account to debtor—
Where goods are sold pursuant to **section 28** or **section 33**, the creditor must, within 10 days after the sale of the goods, give the debtor a statement of account in writing, showing—

- 5 (a) The amount of the gross proceeds of sale:
(b) The amount of the costs and expenses of and incidental to the sale:
(c) The amount required to settle the agreement under **section 32** as at the date of the sale:
10 (d) The balance owing by the creditor to the debtor, or by the debtor to the creditor, as the case may be.

Cf. 1971, No. 147, s. 32

35. Debtor's right to refund—(1) If the net proceeds of sale exceed the amount required to settle the agreement under **section 32** as at the date of the sale, the debtor is entitled to recover the amount of the excess from the creditor.

(2) The debtor must commence proceedings for recovery of the excess within 6 months after the statement of account is given to the debtor under **section 34**, otherwise the excess is not recoverable.

Cf. 1971, No. 147, s. 33

36. Limit on creditor's right to recover from debtor—If the net proceeds of sale are less than the amount required to settle the agreement under **section 32** as at the date of the sale, the creditor is not entitled to recover more than the balance left after deducting those proceeds from that amount (whether under a judgment or otherwise).

Cf. 1971, No. 147, s. 34

37. Court may vary existing judgments or orders when goods are repossessed—In any legal proceedings in relation to a credit agreement, after the creditor has taken possession of the goods, the Court before which such proceedings are brought may vary or discharge any judgment or order of any Court (whether a District Court or not) against the debtor for recovery of money so far as is necessary to give effect to the provisions of **sections 35 and 36**.

Cf. 1971, No. 147, s. 35

PART 5

MISCELLANEOUS PROVISIONS

38. Power of Court to extend times—Any time prescribed by this Act for the service or giving of any notice or other document or for the commencement of any proceedings may, on an application made to the Court (either before or after the expiration of that time but after notice to the other party to the agreement), be extended by that Court for such further period, and upon such conditions, as the Court thinks fit.

Cf. 1971, No. 147, s. 45

39. Service of notices—(1) Any notice or other document required or authorised by this Act to be served on or given to any person must be in writing and is sufficiently served or given if—

- (a) It is delivered to that person; or
- (b) It is left at that person's usual or last known place of abode or business or at an address specified for that purpose in the agreement; or
- (c) It is posted in a letter addressed to that person by name at that place of abode or business or address.

(2) If the person is absent from New Zealand, the notice or other document may be served on or given to the person's agent in New Zealand.

(3) If the person is deceased, it may be served on or given to the person's personal representatives.

(4) If the person is not known, or is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representatives, the notice or other document must be served or given in such manner as may be directed by an order of the Court.

(5) If any such notice or other document is sent to any person by registered letter, it is deemed to have been delivered to the person on the 4th day after the day on which it was posted, and in proving the delivery it is sufficient to prove that the letter was properly addressed and posted.

(6) Notwithstanding anything in the foregoing provisions of this section, the Court may in any case make an order directing the manner in which any notice or other document is to be served or given, or dispensing with the service or giving thereof.

(7) This section does not apply to notices or other documents served or given in any proceedings in any Court.

Cf. 1971, No. 147, s. 46

5 **40. Jurisdiction of District Courts**—A District Court has jurisdiction to exercise any of the powers conferred by any of the provisions of this Act in any case where—

- (a) The occasion for the exercise of the power arises in the course of any civil proceedings properly before the Court; or
- 10 (b) The total amount in respect of which an order of the Court is sought is not more than \$200,000; or
- (c) The parties agree, in accordance with section 37 of the District Courts Act 1947, that a District Court has jurisdiction to hear and determine the application.

15 Cf. 1971, No. 147, s. 47

41. Jurisdiction of Disputes Tribunals—(1) A Disputes Tribunal established under the Disputes Tribunals Act 1988 has jurisdiction to exercise the powers conferred on a Court by any of the provisions of this Act in any case where, subject to this
20 section, the total amount in respect of which an order of the Tribunal is sought is not more than \$3,000.

(2) Subject to this section, an order of a Disputes Tribunal under any of the provisions of this Act must not—

- (a) Require a person to pay an amount exceeding \$3,000;
- 25 (b) Declare a person not liable to another for an amount exceeding \$3,000;
- (c) Vest any goods exceeding \$3,000 in value in any person;
- (d) Direct the transfer or assignment or delivery of possession of goods the value of which exceeds \$3,000,—
- 30 and an order of a Tribunal that exceeds any such restriction is entirely of no effect.

(3) Where, in respect of any proceedings properly before a Disputes Tribunal, the jurisdiction of the Tribunal has been extended under an agreement made pursuant to section 13 of
35 the Disputes Tribunals Act 1988, **subsections (1) and (2)** of this section are to be read as if every reference in those subsections to \$3,000 were a reference to \$5,000.

(4) Any reference in this section to \$3,000 is, if a greater amount is from time to time specified in section 10 of the
40 Disputes Tribunals Act 1988, to be read as a reference to that greater amount.

(5) The reference in **subsection (3)** of this section to \$5,000 is, if a greater amount is from time to time specified in section 13 of the Disputes Tribunals Act 1988, to be read as a reference to that greater amount.

Cf. 1971, No. 147, s. 47A

5

42. Offences to be punishable on summary conviction—(1) Every offence against this Act is punishable on summary conviction.

(2) Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, any information in respect of any offence against this Act may be laid at any time within 2 years after the time when the matter of the information arose.

Cf. 1971, No. 147, s. 49

Struck Out (Unanimous)

43. No contracting out—(1) The provisions of this Act have effect notwithstanding any provision to the contrary in any agreement.

(2) Section 56 of the Sale of Goods Act 1908 shall be read subject to this section.

New (Unanimous)

43. No contracting out except for certain business transactions—(1) The provisions of this Act have effect notwithstanding any provision to the contrary in any credit agreement.

(2) Nothing in **subsection (1)** applies to a credit agreement made between a creditor and a debtor who—

(a) Acquires, or holds himself or herself out as acquiring, under the agreement, the goods for the purposes of a business; or

(b) Uses, or holds himself or herself out as using, the goods for the purposes of a business,—
provided that—

(c) The credit agreement does not relate to any goods that are of a kind ordinarily acquired for personal, domestic, or household use or consumption; and

(d) The credit agreement is not a hire purchase agreement; and

New (Unanimous)

(e) The contracting out provision is part of the credit agreement at the time when the credit agreement is made; and

5 (f) The credit agreement is in writing.

(3) Section 56 of the Sale of Goods Act 1908 is to be read subject to the provisions of this section.

(4) Every creditor commits an offence against section 13 (i) of the Fair Trading Act 1986 who purports to contract out of any provision of this Act other than in accordance with **subsection (2)**.

10 (5) In this section, “business” has the same meaning as in the Consumer Guarantees Act 1993.

Cf. 1993, No. 91, s. 43

43A. Application of law relating to illegal contracts—

15 The fact that an act which contravenes any of the provisions of this Act has been committed in the course of the performance of any contract does not—

(a) Make that contract illegal; or

20 (b) Except as expressly provided in this Act, make that contract or any provision of that contract unenforceable or of no effect.

Cf. 1971, No. 147, s. 52

44. Power to amend forms—The Governor-General may from time to time, by Order in Council, add to or omit anything from any form in a Schedule to this Act, or otherwise amend any such form, or revoke any Schedule and substitute a new one.

PART 6

AMENDMENTS TO OTHER ENACTMENTS

30 **45. Amendments to Chattels Transfer Act 1924—**Section 50 of the Chattels Transfer Act 1924 is amended by adding, as subsection (2), the following subsection:

35 “(2) Notwithstanding subsection (1) of this section, where clause 7 of the Fourth Schedule is implied in an instrument by way of security to which the Credit (Repossession) Act 1996 applies, the powers in that clause are to be read subject to that Act and are deemed to be modified to take account of the requirements of that Act.”

New (Unanimous)

45A. Amendment to Insolvency Act 1967—The Insolvency Act 1967 is amended by repealing section 91, and substituting the following section:

“**91. Goods on hire purchase**—(1) In this section,— 5

“(a) The terms ‘cash price’, ‘debtor’, ‘goods’, and ‘creditor’ have the same meanings as in **section 2** of the Credit (Repossession) Act 1996:

“(b) The terms ‘purchaser’ and ‘hire purchase agreement’ have the same meanings as in section 2 of the Hire Purchase Act 1971. 10

“(2) **Subsection (3)** applies where a debtor who is the purchaser of any goods comprised in a hire purchase agreement is adjudged bankrupt and the creditor has taken possession of the goods within 21 days before the adjudication and the creditor has not sold or disposed of the goods before adjudication or if the creditor takes possession of the goods after adjudication. 15

“(3) The creditor must not, without the consent in writing of the Assignee, sell or dispose of the goods or part with possession of the goods (except for the purposes of storage or repair) until after the expiration of 1 month from the date on which the creditor serves on the Assignee the notice required to be served on debtors under **section 22** of the Credit (Repossession Act) 1996. 20

“(4) Notwithstanding anything in the Credit (Repossession) Act 1996, the Assignee may— 25

“(a) At any time within 1 month from the date of the service on the Assignee of the notice mentioned in **subsection (3)**, exercise the right to introduce a buyer conferred by **section 31** of that Act; or 30

“(b) At any time before the creditor sells or agrees to sell the goods pursuant to **section 27** of that Act, settle the obligations of the debtor in accordance with **section 32** of that Act.

“(5) If a creditor has, either before or after the adjudication of the debtor, taken possession of any goods comprised in a hire purchase agreement and the Assignee has not exercised, in relation to the goods, the powers conferred on the Assignee by **subsection (4)**, the creditor may prove in bankruptcy for the amount which (having regard to the provisions of **section 36** of the Credit (Repossession) Act 1996) the creditor might have 35 40

New (Unanimous)

recovered from the debtor, and in any such event the creditor must lodge with the creditor's proof of debt the post-possession notice mentioned in **section 22** and the statement of account mentioned in **section 34** of that Act, and the Assignee has the rights conferred on debtors by **sections 22 to 37** of that Act.

“(6) The creditor may assign the goods to the Assignee if, at the time of the adjudication of a debtor who is the purchaser of any goods comprised in a hire purchase agreement, the creditor has not taken possession of the goods, or has taken possession of the goods and not sold or disposed of or parted with possession of them, and in that event the creditor is entitled to prove for the net balance due to the creditor under the agreement.”

15 **46. Amendments to Hire Purchase Act 1971—**

New (Unanimous)

(1A) Section 22 (5) of the Hire Purchase Act 1971 is amended by omitting the words “section 30 of this Act”, and substituting the words “**section 32** of the Credit (Repossession) Act 1996”.

(1) Section 24 of the Hire Purchase Act 1971 is amended by repealing subsection (4), and substituting the following subsection:

“(4) The vendor must, unless he or she elects to regard the goods as still having a value that is not less than 80 percent of the cash price, sell the goods in accordance with **section 28** of the Credit (Repossession) Act 1996, and **sections 34 to 36** of that Act apply accordingly with such modifications as are necessary. If the vendor elects to regard the goods as having a value that is not less than 80 percent of the cash price he or she must, within 14 days after the termination of the agreement, serve on the purchaser a statement in accordance with **section 34** of the Credit (Repossession) Act 1996, which must set out, instead of the items mentioned in **paragraphs (a) and (b)** of that section, the value which the vendor attributes to the goods.”

(2) The Hire Purchase Act 1971 is amended by—

- (a) Omitting from section 24 (5) the words “sections 26 to 35 of this Act”, and substituting the words “**sections 8 to 37 of the Credit (Repossession) Act 1996**”; and

New (Unanimous)

- (aa) Omitting from section 24 (5) the words “other than subsection (2) of section 33”, and substituting the words “other than **section 35 (2)**”. 5

- (b) Omitting from section 24 (6) the words “sections 26 to 35 of this Act”, and substituting the words “**sections 8 to 37 of the Credit (Repossession) Act 1996**”; and 10

- (c) Repealing sections 26 to 35, and substituting the following section:

“**26. Repossessions**—The Credit (Repossession) Act 1996 applies in relation to the repossession of goods comprised in a hire purchase agreement.”; and 15

- (d) Omitting from subsections (1) and (2) of the section 47A the expression “sections 10 (1) and 26 (2)”, and substituting the expression “section 10 (1)”; and

New (Unanimous)

- (e) Repealing the Third and Fourth Schedules. 20

47. Amendment to Credit Contracts Act 1981—The Second Schedule to the Credit Contracts Act 1981 is amended by adding to Part I the following:

Struck Out (Unanimous)

- “Where goods are supplied under a credit contract, you have the right, if the creditor serves a pre-possession notice on you, or takes possession of the goods without serving such a notice on you or otherwise in contravention of the Credit (Repossession) Act 1996, to apply to the Court for relief under **section 13** of that Act.” 25 30

New (Unanimous)

5 “You have the right to apply to the Court for relief under section 13 of the Credit (Repossession) Act 1996 if goods are supplied under a credit contract to which that Act applies and either—

“(a) The creditor serves a pre-possession notice on you; or

“(b) The creditor takes possession of the goods without serving a pre-possession notice on you, or otherwise takes possession,—

10 in contravention of the Credit (Repossession) Act 1996.”

47A. Amendment to Disputes Tribunals Act 1988—The First Schedule to the Disputes Tribunals Act 1988 is amended by inserting, in its appropriate alphabetical order, the following item:

15 “Credit (Repossession) Act 1996”.

47B. Amendments to Income Tax Act 1994—(1) Section FC 10 (5) of the Income Tax Act 1994 is amended by omitting the expression “paragraphs (a) and (b) of section 30 (2) of the Hire Purchase Act 1971”, and substituting the expression
20 “paragraphs (b) and (c) of section 32 (2) of the Credit (Repossession) Act 1996”.

(2) Section OB 1 of the Income Tax Act 1994 is amended by omitting from the definition of “lessee’s outstanding balance”, and from the definition of “lessor’s outstanding balance”, the
25 expression “paragraphs (a) and (b) of section 30 (2) of the Hire Purchase Act 1971”, and substituting in both places the expression “paragraphs (b) and (c) of section 32 (2) of the Credit (Repossession) Act 1996”.

48. Transitional provision relating to existing hire
30 **purchase agreements**—(1) This Act also applies to any hire purchase agreement entered into before the commencement of this Act.

(2) However, this Act does not apply to any repossession commenced before the commencement of this Act, and
35 (sections 26 to 35 of) the Hire Purchase Act 1971 continues to apply as if this Act had not been passed.

(3) A repossession is deemed to have commenced if a notice has been served under section 26 of the Hire Purchase Act 1971 or possession of goods has been taken in contravention of that section.

SCHEDULES

SCHEDULE 1

Section 10

PRE-POSSESSION NOTICE

Credit (Repossession) Act 1996, Section 10

To: [Full name of debtor]
[Address]

This is about your [Describe goods], which is subject to a credit agreement with [Full name of creditor]. The agreement is dated

This is to notify you that—

- You are in default under that credit agreement; and
- The default consists of [Specify the nature of the default].

YOU MUST, within* days after the service of this notice on you,—

- Pay \$ to [Name and address to which payment must be made]. That amount is made up as follows:
..... [Show how the arrears are made up];† or
- [Describe obligation to be performed];† AND
- Remedy other breaches of the agreement by [Describe the actions that the debtor must take to remedy the default (in so far as it is capable of being remedied)].

(IF YOU FAIL to comply with these requirements, within) IF YOU DO NOT COMPLY with these requirements within* days after the service of this notice on you, [Full name of creditor] INTENDS TO TAKE POSSESSION of the [Describe goods].

Dated this day of 19.....

.....
[Creditor's signature]

This notice is given by [Full name and address of creditor], as creditor under the credit agreement.

* Insert number of days not being less than 15.

† Delete whichever is inapplicable.

NOTE—Where this notice is sent to a guarantor it must be endorsed at the top of the notice as follows—

This notice is sent to you as guarantor of

As guarantor you have certain rights and obligations and you should seek advice at once.



Section 23

SCHEDULE 2

POST-POSSESSION NOTICE

Credit (Repossession) Act 1996, Section 23

To: *[Full name of debtor]*
[Address]

This is about your *[Describe goods]*, which is subject to a credit agreement with *[Full name of creditor]*. The agreement is dated

This is to notify you that—

Struck Out (Unanimous)

- The *[Describe goods]* has been repossessed:

New (Unanimous)

- The..... *[Describe goods]* was repossessed on *[Date]*.
- You will be entitled to get it back if, within 15 days, you EITHER reinstate OR settle the agreement.

New (Unanimous)

“Reinstate” means to resume the agreement by paying the arrears of instalments owing (plus costs) and remedying other breaches of the agreement.

“Settle” means to completely pay off *[or perform]*, and finish, the agreement.

- To reinstate the agreement, you must—
 - Pay the amount required to reinstate the agreement; and
 - Remedy other breaches of the agreement by *[Describe the actions that the debtor must take to remedy the default (in so far as it is capable of being remedied)]*.

The creditor’s estimate of the amount you must pay to reinstate the agreement is—

Arrears of instalments (including interest and other charges)	\$.....
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New (Unanimous)

Repossession costs	\$.....
Costs of holding, storage, repairs, or maintenance	\$.....
Costs of valuing and preparing goods for sale	\$.....
Cost of re-delivery \$.....

SCHEDULE 2—continued

Costs of remedying breaches of agreement	...	\$.....
Total	\$.....

- To settle the agreement, you must—
 - Pay the amount required to settle the agreement; or
 - [Describe obligation to be performed].

The creditor's estimate of the amount required to settle the agreement is—

Net balance due [If a hire purchase agreement]* OR	\$.....
Balance of the amount of credit outstanding, (together with interest and charges payable under the agreement)* \$.....
Add costs of valuing and preparing goods for sale	\$.....

New (Unanimous)

Add repossession costs	\$.....
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Add costs of holding, storage, repairs, or maintenance \$.....
Add costs of re-delivery \$.....
Add costs of remedying breaches of agreement	\$.....
Total \$.....

IF YOU DON'T REINSTATE OR SETTLE THE AGREEMENT—

- The creditor is required to sell the goods:
- You will be liable for the creditor's loss unless the net proceeds of the sale of the goods is enough to cover your liability:
- You will be entitled to a refund if the net proceeds of the sale of the goods is more than enough to cover your liability.

The creditor's estimate of the value of the goods repossessed is \$.....

NOTES

1. You have the right to apply to a Court for relief if a creditor has served a pre-possession notice on you or has taken possession of goods in contravention of the Act. In most cases, the application can be made to a Disputes Tribunal.

2. You may, at any time until the creditor sells or agrees to sell the goods, reinstate the agreement or introduce a cash buyer who will pay not less than the creditor's estimate of the value of the goods, i.e., Within a period of 15 days after service of this notice, the vendor may not dispose of the goods without your written consent.

3. You may, at any time before the creditor sells or agrees to sell the goods, settle the agreement.

4. The creditor is not obliged to sell the goods by public auction or public tender, but if the creditor does, you are entitled to reasonable notice of—

- The time and place of any proposed offering of the goods for sale by public auction, and of the existence and amount of any reserve price:

SCHEDULE 2—*continued*

- Any proposed offering of the goods for sale by public tender. This does not apply if the goods are perishable or threaten to decline speedily in value.
5. You are entitled, at any time after the creditor takes possession of the goods but before the creditor sells or agrees to sell the goods, to obtain a valuation of the goods at your expense. The creditor must give you or your valuer access to the goods to enable the valuation to be completed.
6. At any offering of the goods for sale by public auction or public tender, you are entitled to bid or tender for them.
7. If the creditor does not sell the goods within 3 months of taking possession, you may—
- Apply to the Court for an order directing the sale of the goods; or
 - Require the creditor to put them up for sale by public auction without reserve.
8. Within 10 days after the sale of the goods, whether by auction or otherwise, the creditor is required to give you a statement of account which will show whether you are entitled to a refund or whether you are still indebted to the creditor in respect of the credit agreement.
9. If you are entitled to a refund and the creditor does not pay it to you, you must, if you wish to recover it, sue the creditor within 6 months after you are given the statement of account.

DO NOT DELAY

Action to enforce your rights should be taken at once. At the end of 15 DAYS after the service of this notice, the creditor is free to sell the goods, if you have not reinstated or settled the agreement or introduced a cash buyer who will pay not less than the creditor's estimate of the value of the goods.

If you are in doubt about what you should do, you should seek advice at once.

NOTES—

1. *Where this notice is sent to a guarantor it shall be endorsed at the top of the notice as follows—*
 This notice is sent to you as guarantor of
 As guarantor you have certain rights and obligations and you should seek advice at once.
 2. *If the Court has already made an order relating to the repossession of the goods under section 14 (3) of the Act, then this notice must be amended to delete the rights that the Court has ordered are not to apply.*
- * Delete whichever is inapplicable † Insert creditor's estimate of value.